Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC. 20554

In the Matter of:	)	
	)	
Communications Assistance for	)	CC Docket No. 97-213
Law Enforcement Act	)	

COMMENTS OF U S WEST, INC.

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SUMMARY

The Commission should extend the CALEA capability compliance deadline by two years. CALEA solutions are not yet available from carriers' manufacturers, and compliance with section 103 will not be reasonably achievable until at least two years after the statutory deadline. Moreover, the extension should cover all carriers on an industrywide basis. Such an extension is permitted under section 107(c)(2), and the facts warrant it here. All manufacturers are on essentially the same timetable in the development of compliant products, and a single Commission decision would save the resources of the Commission, carriers, and law enforcement agencies.

In addition to granting an extension under section 107(c)(2), the Commission should establish, under section 107(b)(5), a comprehensive schedule under which, following the Commission's final decision on the pending deficiency petitions,

(1) Subcommittee TR45.2 will have a reasonable time to reflect the Commission's decision, as necessary, in a revised technical standard,

(2) manufacturers of CALEA solutions will then be afforded 24 months to develop CALEA-compliant products, and

(3) carriers then will have 12 months in which to obtain these solutions, engineer the solutions for carriers' switching platforms, and install the solutions to the extent required by CALEA.

Such a schedule would speed compliance by clarifying the obligations of the various parties and by removing much of the uncertainty that is currently paralyzing the compliance process.

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U S WEST, Inc. ("U S WEST") submits these comments concerning why and how the Commission should extend the date for carriers to comply with the assistance capability requirements imposed by section 103 of the Communications Assistance for Law Enforcement Act ("CALEA").[1/]

As set forth more fully below, the Commission should grant a two-year industrywide extension of the statutory compliance date for all carriers to October 25, 2000. Section 107(a)(2) of CALEA allows the Commission to grant an extension of up to two years if "compliance . . . is not reasonably achievable through application of technology available within the compliance period." 47 U.S.C. § 1006(a)(2). That standard is plainly met: Carriers will be unable to achieve compliance with the capability requirements before the fall of 2000, and quite possibly not for another year or more after that. The technology necessary for compliance is not available today, and the continuing disputes over what capabilities CALEA requires — now brought before the Commission in one petition filed by the Department of Justice and the Federal Bureau of Investigation ("DOJ/FBI") and another by the Center for Democracy and Technology

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1/ *See* Public Notice DA 98-762, released April 20, 1998 ("Public Notice").

("CDT") — inevitably will further delay development of compliant equipment. Once such equipment is available, carriers will need reasonable amounts of time to order, engineer, and install that technology in their networks.

The Commission should adopt a single decision or rule establishing an extension for all carriers. Section 107(c)(2) permits such an approach. The facts warrant it, since all manufacturers appear to be on essentially the same timetable in developing compliant products. And a single, industrywide decision would relieve the Commission, carriers, and law enforcement agencies of the unnecessary burdens that would accompany case-by-case adjudications of individual carrier petitions.

Finally, in addition to granting an extension under section 107(c)(2), the Commission should establish, under section 107(b)(5), a comprehensive schedule under which, following the Commission's final decision on the pending deficiency petitions,

(1) Subcommittee TR45.2 will have a reasonable time to reflect the Commission's decision, as necessary, in a revised technical standard,

(2) manufacturers of CALEA solutions will then be afforded 24 months to develop CALEA-compliant products, and

(3) carriers then will have 12 months in which to order those products, engineer them for carriers' switching platforms, and install the products to the extent required by CALEA.

BACKGROUND

Section 103 of CALEA imposes on carriers the obligation to establish and maintain four general capabilities associated with electronic surveillance. Carriers must ensure that their facilities can

(1) expeditiously isolate and enable the government to intercept a subscriber's wire and electronic communications;

(2) expeditiously isolate and enable the government to access call-identifying information that is reasonably available to the carriers;

(3) deliver intercepted communications and call-identifying information to the government through equipment, facilities, and services procured by the government; and

(4) facilitate these interceptions unobtrusively and in a manner that protects the privacy of other communications.

See 47 U.S.C. § 1002(a). CALEA requires carriers to comply with section 103 within four years after CALEA's enactment (*i.e.*, by October 25, 1998), *see id.* § 1001 nt., unless the Commission extends the compliance deadline. If carriers do not comply with section 103, CALEA authorizes courts to issue enforcement orders, *see id.* § 1007(a), and Title 18 authorizes civil penalties of up to $10,000 per day for violations of such orders, *see* 18 U.S.C. § 2522.

The process of implementing compliance with CALEA's capability assistance requirements began over three years ago, shortly after the statute's enactment. Starting in early 1995, industry began to develop a standard implementing the capability assistance requirements through two standard-setting committees: Subcommittee TR45.2 (sponsored by the Telecommunications Industry Association ("TIA"), the association of telecommunications equipment manufacturers) and Committee T1 (sponsored by the Alliance for Telecommunications Industry Solutions ("ATIS"), a carrier organization). Both of these bodies are standard-setting organizations accredited by the American National Standards Institute ("ANSI").[2/]

[2/] *See* Responsive Statement of TIA to the Appeal of the Federal Bureau of Investigation to the Executive Standards Council of the American National Standards Institute, June 19, 1997, at 2.

Industry has invested resources in developing a standard for several reasons: CALEA itself envisions that the private sector will play the lead role in determining the technology used to provide the assistance capability requirements of section 103. The definition of a stable standard should enable each manufacturer to develop standard CALEA-compliant products for use by all of its carrier customers, rather than having to produce ad hoc solutions on a customer-by-customer basis; thus, carriers could benefit from any economies of scale achieved by manufacturers.[3/] In addition, non-uniform CALEA solutions would increase the risk of system incompatibility, network unreliability, and customer service failures.[4/] Finally, an industry standard would establish a safe harbor for carriers under section 107(a) of CALEA, by clearly specifying one means of complying with section 103's capability requirements. *See* 47 U.S.C. § 1006(a)(2).[5/]

The standard-setting committees made substantial progress on developing a standard until April 1996, when the FBI began to circulate its Electronic Surveillance Interface (ESI) document.[6/] That document set forth the FBI's position on what capabilities are required by CALEA as well as detailed technical provisions on *how*, in the FBI's view, those capabilities

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3/ A single standard would also prove more predictable for law enforcement agencies because specific capabilities would be shared across a wide range of products.

4/ *See* Joint Petition for an Extension of the CALEA Assistance Capability Compliance Date, filed by AirTouch Communications, Inc. and Motorola, Inc., May 4, 1998, at 12.

5/ Compliance with a standard is *one* way — but not the *only* way — of complying with section 103. *See* Public Notice at 2 ("[C]arriers are required to comply with the assistance capability requirements mandated by CALEA even if they choose not to use publicly available standards and take advantage of the safe harbor provision.").

6/ *See* Petition for Rulemaking, filed by Cellular Telecommunications Industry Association ("CTIA"), July 16, 1997, at 8-9 ("CTIA Petition").

must be provided. Although the ESI document was submitted late in the development of the industry standard, the committees incorporated most of the ESI requirements in their draft standard.[7] Industry and law enforcement were thus able to agree on the contents of a standard that, even in the FBI's view, would cover a large portion of section 103's requirements.

However, privacy groups made clear that they opposed one portion of the standard, relating to the capability to track wireless telephones. In addition, industry and law enforcement agencies disagreed over whether section 103 requires carriers to provide certain "punch list" capabilities demanded by the FBI. The punch list capabilities include the ability to intercept communications of parties other than the person named in a court order when those parties are on hold during a conference call; the ability to access various dialing and signaling tones generated during telephone calls; the contemporaneous delivery of call-identifying information and call content; the automated delivery of surveillance status information; and standardized delivery interface protocols. Carriers have maintained that neither section 103 nor any other legal authority requires them to provide the punch list items, which go substantially beyond the electronic surveillance capabilities that carriers have traditionally provided to law enforcement agencies.

As a result of the FBI's late release of the ESI document, the time necessary to incorporate much of that document in the draft standard, and the FBI's persistent opposition to any standard that omits the punch list, the standards committees were unable to issue a proposed industry standard for balloting until March 1997.[8] In the ensuing vote, industry strongly

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[7] *See id.*

[8] *See id.* at 10.

supported the proposed standard. But the FBI, and numerous state and local law enforcement agencies with which it coordinated, submitted ballots opposing it.[9/] In July 1997, the committees revised the proposed standard to reflect some of the ballot recommendations,[10/] but did not add the punch list capabilities. The revised standard then was issued for a second round of balloting that was governed by a different set of ANSI procedures. Under these procedures, standards can be adopted for an interim period based on only the votes of industry members. Industry unanimously approved the revised document, and in December 1997 TIA and Committee T1 jointly published Interim Standard/Trial Use Standard J-STD-025 (the "Interim Standard").[11/]

As the Commission is well aware, adoption of a standard for a switching system is only the first step in implementing the technology contemplated by that standard. That is as true in the case of the Interim Standard as it is for others that address complex new technologies. Indeed, the Interim Standard fundamentally alters the way in which law enforcement agencies will conduct much of their electronic surveillance and thus requires entirely new technology to effect interceptions.

Today, as in the past, law enforcement agencies conduct the vast majority of wire interceptions of content and call-identifying information by placing physical connections on traditional copper facilities. Those agencies may continue to use these techniques in the future. However, the Interim Standard also requires carriers to perform *new* surveillance functions that they have never before provided (such as location tracking of wireless telephones) and to revamp

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9/ *See id.*

10/ *See id.* at 11.

11/ *See* TIA Press Release, "TIA and ATIS Publish Lawfully Authorized Electronic Surveillance Industry Standard," December 5, 1997.

how they perform existing electronic surveillance functions. For example, the Interim Standard requires carriers to accomplish basic intercepts from *within* the computerized call-processing network rather than by attaching physical elements along local loops. Today's commercially available switches are unable to perform such network-based interceptions. Nor does current technology enable law enforcement agencies to use traditional interception techniques on either traditional copper or coaxial cable loops that carry digitally-formatted signals. For example, when law enforcement attempts to attach a connection to a loop used for ISDN, it hears only the continuous "hiss" of a data stream.

In short, manufacturers of switching platforms and other technologies have yet to offer products that provide the functions called for by the Interim Standard, and accordingly are unable to provide such CALEA capabilities today. Nor, as set forth below, will carriers be able to obtain — much less provide — such capabilities for some time.

The situations of U S WEST's two subsidiary carriers — U S WEST Communications, Inc. ("USWC") and MediaOne Telecommunications ("MediaOne")[12/] — collectively illustrate the issues faced by many wireline and wireless carriers. USWC is an incumbent LEC, serving customers in 14 states primarily with local plant that uses copper loops and both digital and other switches. USWC also provides ISDN services in a substantial number of central offices, and it holds several dozen 10 mHz PCS licenses. MediaOne provides competitive local services in several metropolitan areas using digital switches and the cables and other facilities of its cable TV systems. USWC and MediaOne use switching platforms produced by the three of the principal switch manufacturers — Nortel, Lucent, and Ericsson.

12/ MediaOne Telecommunications is the name used by the telecommunications units of U S WEST Media Group, a subsidiary of U S WEST, Inc.

Although these manufacturers have been working to comply with CALEA since the statute's enactment, they normally do not begin serious efforts to develop new products before a stable standard exists. Because the Interim Standard was not adopted until December 1997, the manufacturers only recently undertook such efforts with respect to that standard. As a result, and because the product development process for manufacturers usually consumes many months,[13/] none of the manufacturers supplying USWC and MediaOne expects to have CALEA solutions commercially available by the October 25, 1998 deadline.

Indeed, according to these manufacturers, even if no party had filed a deficiency petition, they would not have been able to produce solutions that comply with the Interim Standard before late 1999 at the earliest. Manufacturers typically need two years from the establishment of a stable standard to develop a digital telephony enhancement;[14/] the development period may be somewhat shorter here because manufacturers have already made some progress, but no one suggests that less than 18 months is required.[15/] Indeed, even DOJ and the FBI acknowledge that carriers would need 18 months from a Commission decision to implement the punch list capabilities.[16/]

13/ *See* Petition for Rulemaking, filed by Telecommunications Industry Association, April 2, 1998, at 7-8 ("TIA Petition").

14/ *See id.*

15/ *Id.* at 10.

16/ *See* Joint Petition for Expedited Rulemaking, filed by the Department of Justice and Federal Bureau of Investigation, March 27, 1998, at 63 ("DOJ/FBI Petition").

Once CALEA solutions do become commercially available, carriers will need additional time to order, engineer, and install the technology in switches across their networks.[17] USWC, for example, normally needs about five months, after an upgrade becomes commercially available, to order and engineer the upgrade for the network. Installation and testing takes still more time. For example, in Phoenix, where USWC has 44 switches, installation of a CALEA-compliant product would require about nine months. Altogether then, USWC would not be able to achieve compliance with CALEA section 103 in such a city (assuming such compliance was required) until at least one year after CALEA solutions become commercially available. MediaOne anticipates being able to install a CALEA solution in its substantially smaller number of switches within six months after commercial availability.

In short, if the Commission confirmed the Interim Standard today, manufacturers would need at least 18 months to make CALEA solutions commercially available, and carriers would need another six to 12 months to install those solutions. That means the *earliest* compliance date for smaller carriers such as MediaOne would be spring 2000; for larger carriers, it would be fall 2000.

But of course the Commission cannot confirm the Interim Standard today, because the standard now has been formally challenged as deficient in two petitions filed with the Commission. On March 26, 1998, CDT filed a petition asserting that the Interim Standard includes two capabilities not required by CALEA.[18] The next day, DOJ and the FBI filed a joint

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[17] *See* TIA Petition at 8 (after product has been developed, "manufacturers (working with their carrier customers) require several more months (approximately 6-12) to modify their equipment facilities and services to accept the new features and to test implementation").

[18] *See* Petition for Rulemaking under Sections 107 and 109 of the Communications Assistance for Law Enforcement Act, filed by the Center for Democracy and Technology, March

petition challenging the Interim Standard because it lacks ten "punch list" capabilities.[19/] Despite the serious legal issues presented by the deficiency petitions,[20/] in an effort to cooperate with law enforcement agencies, industry has begun to develop an Enhanced Surveillance Services ("ESS") standard that would implement the items contained in the punch list.[21/]

Nonetheless, the filing of these deficiency petitions inevitably will delay further the commercial availability of CALEA solutions. Manufacturers already have said they are reluctant to continue developing their CALEA-compliant products while the Commission considers the petitions, because the Commission's decision could make any completed solution instantly obsolete. Thus, on March 30, 1998, Lucent and Ericsson — two of U S WEST's three switch suppliers — filed a petition along with AT&T Wireless Services requesting a two-year extension of the CALEA compliance deadline.[22/] According to the petition, "[f]urther development of a CALEA solution in the face of the unstable industry standard would expose the vendors to potentially enormous expense of money and engineering resources because any

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26, 1998 ("CDT Petition").

19/ *See* DOJ/FBI Petition, at 1-2.

20/ As U S WEST will show in the next comment round (May 20/June 5), the punch list items fall well outside the capability assistance requirements of section 103 of CALEA.

21/ *See* TIA Petition at 12 & n.18; *see also* Response to Petition for Rulemaking, filed by Cellular Telecommunications Industry Association ("CTIA"), Personal Communications Industry Association ("PCIA"), and United States Telephone Association ("USTA"), April 9, 1998, at 7-9 ("CTIA/PCIA/USTA Response"). Subcommittee TR45.2 is coordinating this standard-setting project, and U S WEST and other carriers have taken part in the discussions.

22/ *See* Petition for Extension of Compliance Date, filed by AT&T Wireless Services, Lucent Technologies, and Ericsson, March 30, 1998.

modification to the existing industry standard could require significant changes in Lucent's or Ericsson's individual CALEA solution."[23/]

On April 2, 1998, TIA — the manufacturers' trade association of which Nortel, USWC's third switch supplier, is a member — filed a similar request.[24/] TIA asked that the compliance deadline be extended by "at least two years" from the Commission's final determination on the deficiency petitions.[25/] The TIA petition noted that "proceeding [toward the production of CALEA solutions] in the face of the current challenges to J-STD-025 would cause manufacturers to waste valuable engineering resources, sacrificing other profit-making activity, and expose the companies to the prospect of having to create several versions of its CALEA solution."[26/] Indeed, as both the Lucent/Ericsson petition and the TIA petition make clear, such a delay will occur even if the Commission ultimately adopts the Interim Standard without modification, because of the manufacturers' understandable reluctance to invest in the development of CALEA solutions that may be made obsolete by the Commission's disposition of the deficiency petitions.

Moreover, the commercial availability of CALEA-compliant equipment will be delayed even further if the Commission promulgates a rule that *differs* in substance from the Interim Standard. To ensure compatible CALEA solutions, standard-setting organizations would first need time to develop revised technical requirements, and manufacturers then would have to

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23/ *Id.* at 1.

24/ *See* TIA Petition at 1-2.

25/ *Id.* at 2.

26/ *Id.* at 6.

build compliant products based on those requirements. For example, if (as CDT has demanded) the Commission required the deletion of or changes to some capabilities in the Interim Standard, manufacturers and carriers would need additional time to re-engineer the solutions already in development. And if (despite the limited scope of CALEA) the Commission required carriers to implement any of the punch list capabilities, carriers and manufacturers would need substantial time to develop these capabilities, particularly because the technical understanding of the punch list capabilities is still at a relatively primitive stage.

As a practical matter, the filing of the deficiency petitions has introduced between six and 18 months of additional delay in carriers achieving compliance with the CALEA capability requirements. First, the Commission will need time to decide the issues presented by the petitions, and even DOJ/FBI recognize that, with expedited treatment, a Commission decision cannot reasonably be expected before September 1998.[27/] Second, if the Commission decision modifies the Interim Standard in any substantial respect, the standard should (for reasons set forth in Part II, below) be remanded to the appropriate standard setting body; TIA suggests that TR45.2 would need a year to complete work on such a remand. Thus, with the filing of the deficiency petitions, the earliest possible date that any carrier can achieve compliance now is fall 2000, assuming that the Commission ultimately confirms the Interim Standard as it is. And changes to the standard would defer the ability to achieve compliance even further.

27/ *See* DOJ/FBI Petition at 66-67.

DISCUSSION

I. THE COMMISSION SHOULD GRANT A TWO-YEAR EXTENSION OF THE COMPLIANCE DATE.

Despite the good faith efforts of carriers, compliance with section 103 will not be reasonably achievable until at least two years after the statutory compliance deadline. The Commission therefore should use its authority under section 107(c) to extend the deadline to October 25, 2000.

Section 107(c) authorizes the Commission to extend the statutory deadline if it determines that compliance with the capability requirements of section 103 "is not *reasonably achievable* through application of *technology available within the compliance period.*" 47 U.S.C. § 1006(c)(2) (emphasis added). Section 107(c) limits the duration of any single extension under that provision to two years, *see id.* § 1006(c)(3), although the Commission may grant "1 *or more* extensions" of the deadline, *id.* § 1006(c)(1) (emphasis added).

A full two-year extension of the statutory deadline is plainly warranted because compliance will not be reasonably achievable for carriers before October 2000 at the earliest. Even if the Commission confirmed the Interim Standard *today* without change, CALEA solutions would not be commercially available until late 1999. But the Commission no doubt will, and indeed should, take considerable care in resolving the deficiency petitions, and manufacturers understandably will slow their product development while the petitions are under consideration. As a result, if the Commission confirms the Interim Standard by the end of September of this year (as requested by DOJ/FBI[28/]), CALEA-compliant products implementing

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28/ DOJ/FBI Petition at 67.

the standard will not become commercially available until spring 2000. And then carriers will need six months to a year or longer to install those products.

The timeline will be longer if the Commission requires the Interim Standard to be modified. Following such a decision, the appropriate industry standard-setting organization should be afforded a reasonable time — TIA has suggested one year — to develop the necessary technical requirements and standard. Manufacturers then will need at least 18 months to make their products commercially available. Carriers then will need six to 12 months to install those products. On this schedule, carriers realistically could not achieve compliance before sometime in 2001.

Finally, the Commission should reject the suggestion of DOJ/FBI that the compliance deadline be extended for the punch list capabilities but not for the Interim Standard.[29/] CALEA compliance is an exceedingly costly undertaking, and forcing carriers to install one solution that incorporates the Interim Standard and then another that adds the punch list capabilities would be expensive and wasteful, requiring duplication of many development and installation costs. That is a particularly undesirable result here, where Congress has authorized only $500 million for CALEA compliance. Moreover, as TIA has noted, multiple versions of CALEA solutions would threaten law enforcement's ability to conduct electronic surveillance because of potential system incompatibility problems.[30/] Thus, whatever capabilities the Commission includes in its final standard, it should establish just one deadline for the installation of all of the required capabilities.

29/ *See* DOJ/FBI Petition at 63, 67.

30/ *See* TIA Petition at 6-7.

II. THE COMMISSION SHOULD GRANT A SINGLE INDUSTRYWIDE EXTENSION RATHER THAN EXPEND ITS RESOURCES ON CASE-BY-CASE ADJUDICATION.

The Commission should streamline the extension process by granting a single, industrywide extension of the CALEA compliance deadline. Section 107(c)(2) authorizes the Commission to grant extensions if the Commission determines that compliance is not reasonably achievable. That section does not limit the Commission's authority to granting extensions based on individual carrier petitions. Rather, the statute states simply that the Commission "may . . . grant an extension under this subsection, if the Commission determines that compliance with assistance capability requirements under section 103 is not reasonably achievable within the compliance period." *Id.* § 1006(c)(2). Nothing, in other words, requires the Commission to make individualized, carrier-by-carrier determinations regarding CALEA extensions.

Nor would such an approach be a sensible use of Commission, carrier, or law enforcement resources. CALEA potentially affects thousands of telecommunications carriers. With the statutory deadline now less than six months away, carriers must file individual petitions now or in the near future in order to secure extensions before October 25 of this year.[31/] Deciding such petitions on a case-by-case basis is unnecessary, since all carriers are dependent on the same group of manufacturers for CALEA solutions, and therefore would waste the resources of carriers, law enforcement agencies, and the Commission.

A single, industrywide extension also makes more sense than trying to tailor extensions to the commercial availability of particular manufacturers' products. The delay in

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31/ In case the Commission decides to address the issue of extensions on a carrier-by-carrier basis, USWC and MediaOne are filing extension petitions contemporaneously with these comments. A Commission decision granting an industrywide extension would presumably obviate the need for action on these individual carrier petitions.

issuing an industry standard and the deficiency petitions challenging that standard have put all manufacturers in roughly the same position regarding CALEA solutions: None of them will have solutions commercially available until the year 2000 at the earliest. Similarly, although carriers differ in size and the technologies they use, all carriers will need at least six months to order, engineer, and install CALEA solutions after they become commercially available. A two-year industrywide extension therefore would accurately recognize that no carrier will be able to comply with section 103 before October 2000.

III. THE COMMISSION ALSO SHOULD ESTABLISH A COMPREHENSIVE COMPLIANCE SCHEDULE UNDER SECTION 107(b)(5) THAT GIVES CARRIERS 12 MONTHS TO COMPLY WITH SECTION 103 AFTER CALEA SOLUTIONS BECOME COMMERCIALLY AVAILABLE.

In addition to granting the extension requested in Part I above, the Commission should oversee progress toward CALEA compliance by establishing a comprehensive compliance schedule under section 107(b)(5). The schedule should provide that, following the Commission's final decision on the pending deficiency petitions,

(1) Subcommittee TR45.2 will have a reasonable time to reflect the Commission's decision, as necessary, in a revised technical standard,

(2) manufacturers of CALEA solutions will then be afforded 24 months to develop CALEA-compliant products, and

(3) carriers then will have 12 months in which to obtain these products, engineer the solutions for carriers' switching platforms, and install the products to the extent required by CALEA.

Such a schedule would speed compliance by clarifying the obligations of standard-setting organizations, manufacturers, and carriers. It would thus remove much of the uncertainty that is currently paralyzing the CALEA compliance process.

Section 107(b) recognizes that, where a deficiency petition has been filed, the Commission may "provide a reasonable time and conditions for compliance with and the transition to any new standard." *Id.* § 1006(b)(5). The statute does not place any time limits on such a schedule, which therefore may extend beyond the two-year extensions authorized by section 107(c). Now that DOJ/FBI and CDT have filed deficiency petitions, the Commission can and should use this authority to adopt a schedule to guide CALEA compliance after the Commission has resolved those petitions. The schedule should outline the obligations of the relevant parties and provide reasonable time frames for the fulfillment of these obligations.

A. *Standard-Setting Organizations.* A new compliance schedule should first remand any technical standardization work to the TIA standards subcommittee and give that organization a reasonable amount of time to accomplish that task.[32/] If the Commission revises the Interim Standard, standardization by Subcommittee TR45.2 will be crucial to developing CALEA solutions that are compatible across the telecommunications industry. Moreover, taking the time to have Subcommittee TR45.2 do the job right will expedite compliance because manufacturers will have a thorough and refined set of technical requirements from which to build CALEA-compliant equipment.

Remanding the technical standardization work to Subcommittee TR45.2 is clearly more appropriate than having the Commission promulgate its own technical requirements. Although the DOJ/FBI deficiency petition proposes regulations that contain specific technical requirements for the punch list capabilities, it would be premature and imprudent for the Commission to propose these or other technical requirements at this time. As noted above,

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32/ *See* TIA Petition at 11-12.

industry is already working on technical requirements for the punch list capabilities through TIA's ESS project. Remanding the task of technical standardization to Subcommittee TR45.2 would allow industry's technical experts to take advantage of the progress made by the ESS discussions.[33/]

Moreover, CALEA assigns primary responsibility for CALEA implementation to the private sector, and industry standard-setting organizations therefore should always be given the first opportunity to develop technical requirements for any CALEA standard. As reflected in CALEA's legislative history, the statute "establishes a mechanism for implementation of the capability requirements that defers, in the first instance, to industry standards organizations." H.R. Rep. No. 103-827, pt. 1, at 26 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3489, 3506. Moreover, CALEA allows "the telecommunications industry itself [to] decide how to implement law enforcement's requirements" and guarantees that "those whose competitive future depends on innovation will have a key role in interpreting the legislated requirements and finding ways to meet them without impeding the deployment of new services." *Id.* at 19, *reprinted in* 1994 U.S.C.C.A.N. at 3499.

Thus, once the Commission resolves the deficiency petitions, it should give Subcommittee TR45.2 the first opportunity to develop technical requirements for any revised standard. And if the Commission is concerned that Subcommittee TR45.2 will not act promptly,

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33/ The danger of bypassing the normal standard-setting process is underscored by the inadequacy of the technical requirements that DOJ/FBI have already proposed. As CTIA, PCIA, and USTA explained in their recent Response to Petition for Rulemaking, the DOJ/FBI technical requirements have been roundly criticized by industry experts as "inefficient, over-engineered, and technically inadequate." *See* CTIA/PCIA/USTA Response at 8. Industry will continue in good faith to discuss these technical requirements with law enforcement agencies, but the Commission should be especially wary of writing such substantively flawed technical requirements into the Code of Federal Regulations.

the Commission could either impose a time limit on the subcommittee's work[34/] or ensure that the subcommittee reports periodically to the Commission regarding its progress.

B. *Manufacturers*. The compliance schedule should give manufacturers 24 months to develop CALEA-compliant products after Subcommittee TR45.2 finishes the standardization work, if any, remanded to it by the Commission. As discussed above, telecommunications manufacturers normally need two years to develop and build products once technical standards are established. Although manufacturers may be able to develop CALEA solutions more quickly, depending on the degree to which the Commission revises the Interim Standard, any significant modifications of the Interim Standard will force substantial re-engineering of the CALEA solutions that manufacturers have begun to develop. The Commission should therefore give manufacturers 24 months to design, build, and distribute CALEA solutions once technical requirements are in place. To ensure that manufacturers take no more time than necessary, the Commission could ensure that they too report back to the Commission periodically regarding their progress.

C. *Carriers*. Finally, a new compliance schedule under section 107(b)(5) should afford carriers sufficient time to comply with section 103 after CALEA solutions become commercially available for their particular equipment. As discussed above, carriers will need more time to comply with section 103 than the two years provided by an extension under section 107(c). Of course, the exact amount of time that carriers need will depend on how much, if at all, the Commission modifies the Interim Standard and how long it takes manufacturers to build CALEA solutions. Carriers thus stand at the end of a compliance process that is still fraught

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34/ *See* TIA Petition at 12 (suggesting a one-year time limit on standardization work by Subcommittee TR45.2).

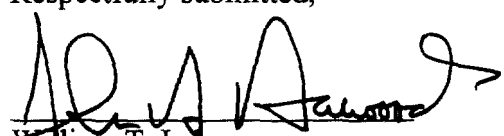
with numerous contingencies. Given this uncertainty, the Commission should define carriers' CALEA obligations not in terms of fixed dates but in terms of when they can reasonably be expected to begin complying with section 103.

A carrier can start moving toward compliance only after its manufacturers make CALEA solutions commercially available. And, as discussed above, large carriers such as USWC will need at least an additional year to order, engineer, and install such solutions in, for example, a large metropolitan area. A new CALEA compliance schedule should therefore guarantee that carriers such as USWC have at least one year after solutions become commercially available to bring their entire networks into compliance. Smaller carriers might need less time, and the Commission therefore may wish to determine at a later date how long various types of carriers will need to achieve compliance once solutions become commercially available. For now, a new compliance schedule should simply establish that carriers will be given 12 months to install solutions after they become commercially available. Establishing such a schedule would significantly lessen carriers' uncertainty regarding their CALEA obligations.

CONCLUSION

For the reasons stated above, the Commission should grant a single industrywide two-year extension of the CALEA compliance deadline and establish a new comprehensive compliance schedule giving carriers 12 months to comply with section 103 after CALEA solutions become commercially available.

Respectfully submitted,



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May 8, 1998

CERTIFICATE OF SERVICE

I, Todd C. Zubler, an attorney in the law firm of Wilmer, Cutler & Pickering, hereby certify that I have on this May 8, 1998 caused to be served by first class mail, postage prepaid, or by hand delivery, a copy of the foregoing document to the following:

Honorable William E. Kennard
Federal Communications Commission
1919 M Street, N.W. - Room 814
Washington, D.C. 20554

The Honorable Harold Furchtgott-Roth
Federal Communications Commission
1919 M. Street, N.W. - Room 802
Washington, D. C. 20554

The Honorable Susan Ness
Federal Communications Commission
1919 M Street, N.W. - Room 832
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The Honorable Michael Powell
Federal Communications Commission
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The Honorable Gloria Tristani
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